

RESOLUTION NO. 2010-15

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF NEWPORT BEACH APPROVING THE TRANSFER OF
DEVELOPMENT RIGHTS IN THE NORTH NEWPORT
CENTER PLANNED COMMUNITY (TD 2009-002, PA 2009-
159)**

WHEREAS, The Irvine Company has applied to the City of Newport Beach for approval of a transfer of development rights as follows:

(1) Transfer 50,000 square feet for general office use from Block 500 to Block 600.

(2) Transfer 165,833 square feet for general office use from Block 500 to San Joaquin Plaza.

WHEREAS, General Plan Policy LU 6.14.3 permits development rights to be transferred within Newport Center as long as the transfer is consistent with the intent of the General Plan and will not result in any adverse traffic impacts.

WHEREAS, the North Newport Center Planned Community Development Plan provides that the City Council shall approve a transfer of development rights if it finds that the transfer will not result in any adverse traffic impacts and will not result in greater intensity of land use than the development allowed without the transfer.

WHEREAS, a traffic analysis entitled *North Newport Center Office Trip Transfer No. 3* (Austin-Foust Associates, Inc., January 15, 2010) was prepared for the application for the transfer of development rights in compliance with General Plan Policy LU 6.14.3 and the North Newport Center Planned Community Development Plan.

WHEREAS, the traffic analysis found that, consistent with General Plan Policy LU 6.14.3 and the North Newport Center Planned Community Development Plan, the transfer of development rights will not result in any adverse traffic impacts.

WHEREAS, the transfer of development rights does not involve a conversion of land uses and will not result in greater intensity than development allowed without the transfer.

WHEREAS, the North Newport Center Planned Community Development Plan provides that if a transfer meets two fixed standards, then the City Council shall approve the transfer. The first fixed standard requires that the transfer not result in any adverse traffic impacts than the development allowed without the transfer. The second fixed standard requires that the transfer not result in greater intensity of land use than the development allowed without the transfer.

WHEREAS, Guidelines Section 15369 of the California Environmental Quality Act ("CEQA") defines the term "ministerial" as "a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision..

WHEREAS, the transfer of development rights in the North Newport Center Planned Community is a ministerial action under CEQA because it only involves application of fixed standards.

WHEREAS, the City Council considered the application at a public meeting on January 26, 2010, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, at which time the City Council considered the transfer of development rights and the traffic analysis.

WHEREAS, the City Council recognizes that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

WHEREAS, the City Council finds that:

(1) Consistent with General Plan Policy LU 6.14.3 and the North Newport Center Planned Community Development Plan, the transfer of development rights will not result in any adverse traffic impacts, as documented in the traffic study.

(2) Consistent with General Plan Policy LU 6.14.3 and the North Newport Center Planned Community Development Plan, the transfer of development rights will not result in greater intensity than that which is allowed without the transfer, and is consistent with the intent of the General Plan.

(3) The transfer of development rights satisfies the two fixed standards provided in the North Newport Center Planned Community Development because it will not result in any adverse traffic impacts than the development allowed without the transfer, and it will not result in greater intensity of land use than the development allowed without the transfer. Since the transfer satisfies the two fixed standards, approval is a "governmental decision involving little or no personal judgment" and is a ministerial action under CEQA. A ministerial action is exempt from CEQA's environmental review requirements. Cal. Pub. Res. Code §

21080(b)(1); Cal. Code Regs. tit. 14, § 15268. The transfer of development rights is therefore exempt from CEQA.

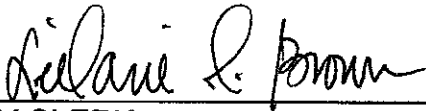
NOW, THEREFORE, BE IT RESOLVED that the City Council approves the transfer of development rights (TD 2009-002, PA 2009-159), based on the weight of the evidence in the administrative record, including the traffic study.

PASSED AND ADOPTED on the 26th day of January, 2010.



MAYOR

ATTEST:



CITY CLERK



STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2010-15 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 26th day of January, 2010, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Selich, Rosansky, Henn, Webb, Gardner, Daigle, Mayor Curry

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 27th day of January, 2010.

Leilani I. Brown

City Clerk
Newport Beach, California

(Seal)

